

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DAVID CHARLES MAIER,

Plaintiff,

v.

ROBB ROBLE, ET AL.,

Defendants.

CASE NO. C20-756RSM

ORDER OF DISMISSAL

This matter comes before the Court on the Report and Recommendation (“R & R”) of the Honorable Brian A. Tsuchida, United States Magistrate Judge. Dkt. #12. No objections to the R & R were filed. For the reasons set forth below, this Court ADOPTS the Report and Recommendation and DISMISSES this case for failure to pay the filing fee.

On May 16, 2020, Plaintiff, proceeding pro se, submitted a 42 U.S.C. § 1983 civil rights complaint and deficient application to proceed in forma pauperis (“IFP”). Dkt. #1. The Clerk of Court directed Plaintiff by letter dated May 20, 2020, to either pay the \$400.00 filing fee or submit a sufficient application to proceed IFP. Dkt. #2. On June 1, 2020, the Clerk’s letter was returned to the Court as “undeliverable.” Dkt. #4. Judge Tsuchida issued an R & R dated June 22, 2020 recommending that this action be dismissed without prejudice for failure to pay the filing fee pursuant to 27 U.S.C. § 1914. Petitioner has failed to file any objections to the R & R. The Court’s

1 docket reflects that Petitioner did not receive a copy of the R & R, but also that Petitioner did not
2 file a notice of change of address such that a copy could be provided. Dkt. #6.

3 A district court has jurisdiction to review a Magistrate Judge's report and recommendation
4 on dispositive matters. *See* Fed. R. Civ. P. 72(b). "The district judge must determine de novo any
5 part of the magistrate judge's disposition that has been properly objected to." *Id.* "A judge of the
6 court may accept, reject, or modify, in whole or in part, the findings or recommendations made
7 by the magistrate judge." 28 U.S.C. § 636(b)(1). The advisory committee's notes to Rule 72(b)
8 of the Civil Rules state: "When no timely objection is filed, the court need only satisfy itself that
9 there is no clear error on the face of the record in order to accept the recommendation" of a
10 magistrate judge. Fed. R. Civ. P. 72(b) Advisory Committee's Note to 1983 Amendment.

11 The Court is aware that Petitioner did not receive a copy of the R & R and therefore has
12 not evaluated Judge Tsuchida's recommendations. However, Petitioner was required to file a
13 notice of change of address to keep the Court and opposing parties advised as to his current address.
14 Local Rules W.D. Wash. LCR 41(b)(2). The Court's docket reflects that the R & R was mailed to
15 Petitioner on or around June 22, 2020. Dkt. #5. Petitioner's copy of this R & R was returned to
16 the Court as undeliverable mail on July 2, 2020. Dkt. #6.

17 In an abundance of caution, the Court gave Petitioner two weeks past the noting date of the
18 R & R file the requisite notice of change of address. Having reviewed the Application to Proceed
19 IFP and the R & R, the Court finds no clear error in the R & R's recommendation to dismiss for
20 failure to pay the filing fee pursuant to 27 U.S.C. § 1914. For this reason, the Court sees no reason
21 to delay disposition of the R & R. *See Carey v. King*, 856 F.2d 1439, 1441 (9th Cir. 1988) (where
22 petitioner failed to file notice of change of address, an order to show cause why dismissal is not
23 warranted "would only find itself taking a round trip tour through the United States mail.").

1 Accordingly, the Court finds and ORDERS:

2 (1) The Court ADOPTS the Report and Recommendation, Dkt. #5.

3 (2) This case is DISMISSED without prejudice.

4 (3) The Clerk is directed to send copies of this Order to the parties and to Judge
5 Tsuchida.

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7 Dated this 29th day of July, 2020.

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11 RICARDO S. MARTINEZ
12 CHIEF UNITED STATES DISTRICT JUDGE
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